

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1208 of 2017

- State Of Chhattisgarh Through District Magistrate North Bastar Kanker Chhattisgarh.

---- **Petitioner**

Versus

- Sukhranjan Usendi S/o Mahgu Ram Usendi, Aged About 41 Years R/o Village Sangam, Present At Village Lajeda, Police Station Gadchiroujali Maharashtra.

---- **Respondent**

For Petitioner/State	: Shri Vivek Sharma, G.A.
For Respondent	: None present.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Order on Board by Pritinker Diwaker, J.

26/10/2017

Present petition filed under Section 378(3) Cr.P.C. has been filed to assail the impugned judgment and order dated 26.04.2017 passed by Additional Sessions Judge, Bhanupratappur, District North Bastar, Kanker in S.T. No. 72/2016 whereby the court below has acquitted the respondent of the offence under Sections 376 and 506 Part II IPC.

2. As per prosecution case, on the basis of written report Ex.P-7 lodged by the prosecutrix (PW-1) FIR Ex.P-8 was registered against the respondent on 28.2.2016 for the offence punishable under Sections 376 & 506 Part II IPC. It is alleged by the prosecutrix that from February 2012 till May 2015 she was subjected to physical relation by the respondent on the pretext of marriage but when he refused to marry her she lodged the report. After filing of the charge sheet, the trial judge has framed charge under Sections 376 & 506 Part II IPC. In relation to the above offence, prosecution has examined

13 witnesses. Statement of the accused/respondent was also recorded under Section 313 Cr.P.C. in which he pleaded his innocence and false implication in the case. This apart one defence witness was also examined.

3. By the impugned judgment, the trial Judge has acquitted the accused/respondent on the ground that there was inordinate delay of about three years in lodging the FIR and that the prosecutrix was a consenting party.

4. We have heard counsel for the petitioner/State and perused the record.

6. From the statement of the prosecutrix it is apparent that there is inordinate delay of about three years in lodging the FIR and during this period, the prosecutrix allowed the respondent to have physical relation with her. They have also lived together for about three years and during this period no protest was raised by the prosecutrix. The prosecutrix is a major lady aged about 21 years and she allowed the applicant to have physical relation without offering any protest. The findings recorded by the trial court is based on correct appreciation of evidence. Apparently, the prosecutrix appears to be a consenting party where she lived along with the respondent for about three years and then she lodged the report.

7. After considering the material available on record as well as the elaborate judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in an appeal/revision against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate/revisional Court taking the other possible view into consideration, is not permissible in law, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offence under Sections 376 and 506 Part II IPC is just and proper and does not call for any interference. Accordingly, the leave as sought for by the

petitioner for registration of appeal against the judgment of acquittal is hereby refused.

Petition is accordingly dismissed.

Sd/-

Pritinker Diwaker
Judge

Sd/-

Arvind Singh Chandel
Judge